

Consumer Dispute Settlement: A Comparative Study on Indonesian and Malaysian Law

Norma Sari*

DOI: <https://doi.org/10.22304/pjih.v5n1.a6>

Submitted: October 27, 2017 | Accepted: April 23, 2018

Abstract

Consumer dispute settlement becomes an important instrument for protecting consumers. This study aims to analyze: (i) the urgency of consumer dispute settlement body and small claim mechanism; (ii) the comparison of consumer dispute settlement law in Indonesia and Malaysia; (iii) a lesson from Malaysia concerning small claim court. This research was conducted as a library research. The results show that urgency of consumer dispute settlement body and small claim mechanism are to guarantee ultimate consumer interest. Comparing the consumer dispute settlement law in Indonesia and Malaysia, each institution and mechanism has advantages and disadvantages to consider for betterment in the future. Consumer Dispute Agency is a middle way or a combination of SCC system and specific dispute resolution body. However, Indonesia needs to reiterate the existing Consumer Protection Act regarding the duty and authority of Consumer Dispute Settlement Agency. There is authority overlap with other agencies needed to be addressed.

Keywords: consumer dispute settlement, dispute settlement law, Indonesia-Malaysia comparative law.

Penyelesaian Sengketa Konsumen: Studi Perbandingan Hukum Indonesia dan Malaysia

Abstrak

Penyelesaian sengketa konsumen menjadi instrumen penting dalam perlindungan konsumen. Penelitian ini bertujuan menganalisis: (i) urgensi badan penyelesaian sengketa konsumen dan mekanisme penyelesaian tuntutan secara sederhana; (ii) perbandingan badan penyelesaian sengketa konsumen di Indonesia dengan Malaysia; (iii) pelajaran dari Malaysia tentang peradilan tuntutan sederhana bagi konsumen. Hasil penelitian menunjukkan urgensi badan penyelesaian sengketa konsumen dan mekanisme klaim sederhana adalah untuk menjamin kepentingan terakhir konsumen. Membandingkan hukum penyelesaian sengketa konsumen di Indonesia dan Malaysia, masing-masing institusi dan mekanisme memiliki kelebihan dan kekurangan yang perlu dipertimbangkan untuk perbaikan masa depan. BPSK adalah jalan tengah atau kombinasi dari sistem Small Claim Court dan badan penyelesaian sengketa yang spesifik. Namun, Indonesia perlu meninjau ulang Undang-Undang Perlindungan Konsumen yang ada mengenai tugas dan wewenang BPSK. Ada otoritas tumpang tindih dengan badan lain yang perlu diatasi

Kata kunci: hukum penyelesaian sengketa, penyelesaian sengketa konsumen, perbandingan hukum Indonesia-Malaysia.

* Faculty member at Faculty of Law, Universitas Ahmad Dahlan, Jl. Pramuka No. 42 Yogyakarta, norma.sari@law.uad.ac.id, S.H., M.Hum. (Universitas Gadjah Mada).

A. Introduction

A consumer legal regime without legal remedies to pursue any claim equals a building without the roof. Consumer dispute settlement is a significant aspect for the consumer protection legal regime. Consumer dispute settlement is tantamount to protect the interest of customers.

Indonesia and Malaysia as neighboring countries have many similar problems to face, one of them is consumer protection. The main problem raised in this research is how to compare consumer dispute settlement in Indonesian and Malaysian Law. Indonesia and Malaysia released the consumer protection act in the same year, which is 1999. Indonesia established the Law Number 8 of 1999 on the Consumer Protection (Indonesia Consumer Protection Law) on April 20, 2000 and was enforceable after 1 (one) year after while Malaysia promulgated Laws of Malaysia Act 599, Consumer Protection Act 1999 on September 9, 1999 (Malaysia Consumer Protection Law) and coming into operation November 15, 1999.

This research's questions will be answered by conducting a literature study. The study aims firstly to describe the urgency of consumer dispute settlement body and small claim mechanism. Secondly, to examine the comparison of consumer dispute settlement law in Indonesia and Malaysia. Thirdly, to analyze the improvement of small claim mechanism and dispute settlement body of consumer in Indonesia.

The term comparative law, in a foreign language, is translated *vergleihende rechtstehre* (Dutch), *droit comparé* (French). This term, in higher education law in the United States, is often translated as conflict law or converted law of disputes, which means to be different for legal education in Indonesia.¹ Comparative law shows the distinction between comparative law as a method and as a science. Such ambiguity is usually found in broad formulations, such as can be found on Black's Law Dictionary stated comparative jurisprudence is the study of the principles of legal science by the comparison of various system of law.² Zweigert dan H. Kötz define comparative law is the comparable legal institutions of the solution of comparable legal problems in different system.³

This research is addressing the comparative law on consumer protection. Peter Cartwright (mention the year of Cartwright source) defines consumer protection law as an area of public law that regulates private law relationships between individual consumers and the businesses engaged in providing goods and services. Laws protecting consumers have adopted a variety of legal forms to achieve their objectives, including criminal law, tort and contract.⁴

AZ Nasution argues that consumer protection law is part of consumer law which contains principles or rules of conduct and also contains the nature of protecting

¹ Romli Atmasasmita, *Perbandingan Hukum Pidana*, Bandung: Mandar Maju, 2000, p. 6.

² Henry Campbell Black, *Black's Law Dictionary*, 4th edition, New York: West Publishing Co, 1968, p. 78.

³ Zweigert and H. Kötz, *An Introduction to Comparative Law*, 2nd edition, Oxford: Oxford University Press, 1998, p. 34.

⁴ Peter Cartwright, *Consumer Protection and the Criminal Law: Law, Theory and Policy in the UK*, Cambridge: Cambridge University Press, p. 1.

the interests of consumers. He later defines consumer law as a whole of legal principles and rules governing relationships and problems between various parties with one another in relation to goods and /or services within the social life. The legal principles and rules governing consumer relationships and problems are spread in various fields of law, both written and unwritten in the field of civil law, commercial law, criminal law, administrative law (state) and international law, in particular conventions relating to consumer interests.⁵

Inosentius Samsul defines consumer protection law as the whole principles and rules governing and protecting consumers in the relationships and problems of supply and use of consumer products between providers and consumers constitute the entire legislation, both law and other legislation and decisions - a judge's decision whose substance governs the interests of consumers.⁶

United Nations Guidelines for Consumer Protection (as expanded in 1999) adjust that to measures enabling consumers to obtain redress, the Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.⁷

In general the advantage of this research is to draw a picture of consumer protection law for both countries. The specific improvements are:

- a. Providing the description about urgency of consumer dispute settlement body and small claim mechanism.
- b. Presenting the comparison of consumer dispute settlement body in Indonesian and Malaysian Law.
- c. Giving analysis a lesson from Malaysia concerning small claim court for consumer dispute.

B. Urgency of Consumer Dispute Settlement Body and Small Claim Mechanism

In the relationship between consumers and businessman, consumers demand for justice by making claims. The claims seek to reflect consumer dissatisfaction due to unfair practices by traders. Besides the substantive law that protects consumer interest, the effective, respected and honored dispute resolution mechanism should also be available.⁸

⁵ Shidarta (ed.), *Hukum Perlindungan Konsumen Indonesia*, Jakarta: Grasindo, 2004, p. 112.

⁶ Inosentius Samsul, *Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak*, Jakarta: Universitas Indonesia, 2004, p. 34.

⁷ United Nations Department of Economic and Social Affairs, "United Nations Guidelines for Consumer Protection (as expanded in 1999), www.un.org/esa/sustdev/publications/consumption_en.pdf, accessed on October 2017.

⁸ W. Harris, "Consumer Disputes and Alternative Dispute Resolution", *Australian Dispute Resolution Journal*, Vol. 4, Issue 3, 1993, p. 238.

The need for the modern small claims court was recognized in 1913 by Dean Roscoe Pound:⁹

“For ordinary causes our contentious system has great merit as a means of getting at the truth. But it is a denial of justice in small causes to drive litigants to employ lawyers, and it is a shame to drive them to legal aid societies to get as a charity what the state should give as a right”.

The legal system exists, then, as a legal remedy through which every person in society who has a valid claim against another should be able to move to attain satisfaction of that claim. Conversely, it should be a protection to persons against invalid claims from other members of society. The fact that a claim is small or held by a person without the knowledge or capabilities to enforce it should be of no importance whatsoever. If the claim is a valid one, it should be capable of enforcement. When a claim cannot be enforced because the relative cost is prohibitive, there is, as Pound has said, a “denial of justice”.¹⁰

Small Claims Courts (SCC) has been set up primarily in order to make civil justice accessible to the poor people. SCC provide an inexpensive and efficient means of dispute settlement for a potentially large number of claimants, but whether they actually perform this function for the poor is debatable, as already pointed out. They have failed to provide “a kind of participatory justice where every citizen would have his say, no matter how small his claim”.¹¹

Consumer dispute is a dispute that one of the parties must be consumer. The Indonesia Consumer Protection Law regulates Article 45 Chapter X. Consumer disputes are, fundamentally, about contracts. Disagreements about the existence, meaning and effect of contracts create problems between the parties to those contracts. The parties can deal with these problems in some of ways, as, for instance, by self-help; by seeking dispute resolution; by seeking regulation; or by recourse to litigation in the general courts. In resorting to ‘self-help’, one party takes direct action to solve a perceived or real dispute to their own satisfaction, without the co-operation or agreement of the other party. The level of intensity and social destruction arising from pursuit of self-help can vary from quietly avoiding or ignoring the relevant contract (an option which can be taken by consumers and industry parties alike) through to public protest, and perhaps even violent action (an option chosen with varying success by both weak and powerful consumers). Self-help is often said to be based on the exercise of rights, but in reality it is not concerned with rights but with the exercise of power. In any event, in the absence of the complete destruction or disabling of one of the parties, such self-help solutions are usually not a resolution or determination of the real or underlying problem, as

⁹ Roscoe Pound, “The Administration of Justice in the Modern City”, *Harvard Law Review*, Vol. 26, No.4, 1913, p. 302, p. 308.

¹⁰ Christopher S. Axworthy, “Controlling the Abuse of Small Claims Courts”, *McGill Law Journal*, Vol. 2, No. 2, 1976, p. 481.

¹¹ Beatrice Moulton, “The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California”, *Stanford Law Review*, Vol. 21, No. 6, 1969, p. 1657.

there is neither agreement between the parties nor enforcement of the outcome by the state. The dispute is not resolved in a lasting or authoritative manner.¹²

According to a research conducted in early 2016 by the Center for Domestic Trade Policy, Agency for the Assessment and Development of Trade, in collaboration with the Bogor Agricultural Institute (IPB) and the Ministry of National Development Planning, one of the needs of consumer protection is advocacy (channel complaints, granting compensation/ compensation for losses due to the use of goods/services). Provision of protection to consumers is not only finished at the time of purchase or when consuming goods or services, but also must be given if the consumption of goods or services cause harm or harm to consumers in the future. Consumer need guarantees of advocacy from the government if they loses due to consuming goods or services. The result showed that 37% of consumers had experienced problems in consuming goods or services. The problem arises from both the merchant and the retailer. However, from the number of consumers experiencing problems, there are only about 54% of consumers who make complaints. Most consumers (44%) directly complained to the seller of the product, while the rest to the producers (15%) and family or relatives (9%). Only a small percentage (1%) made a complaint to the Consumer Complaint Institute. A total of 44% of consumers stated the reason for not making complaints, among others, is not knowing the location of the complainant, complicated complaint procedures, and the long process services.¹³

There are some contributing factors to make the consumers unwilling to access justice for their dispute. Judiciary system has not been simple, fast and low cost, and avoiding attitudes conflict despite its rights as the consumer is violated. Experience consumers who get legal aid from the Indonesian Consumers Foundation (*Yayasan Lembaga Konsumen Indonesia*) feel the access for justice through the courts are time consuming, high cost, as well as losing time from family. Frequently, all the losses are not comparable with restoration of rights which are violated.¹⁴

In Malaysia, before the establishment of the tribunal, all disputes between a consumer and a supplier or manufacturer had to be brought before a civil court which involves complicated procedures, high costs and is time consuming. These are some of the reasons why consumers are reluctant to pursue their claims against irresponsible and unscrupulous suppliers or manufacturers especially when the amount claimed is small.¹⁵

Fostering the development of effective, low cost way for consumers to resolve their disputes and obtain monetary compensation for losses sustained is a key

¹² Paul O'Shea and Charles Rickett, "In Defence of Consumer Law: The Resolution of Consumer Disputes", *Sydney Law Review*, Vol. 28, No. 139, 2006, p. 148.

¹³ Center for Domestic Trade Policy Agency for the Assessment and Development of Trade Policy, *Final Report Analysis of Optimization of Consumer Protection in Indonesia*, Jakarta: Ministry of Trade Republic of Indonesia, 2016, p. 21.

¹⁴ Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-instrumen Hukumnya*, Bandung: Citra Aditya Bakti, 2009, p. 16.

¹⁵ Ministry of Domestic Trade, "Co-operatives, and Consumerism", <https://tppm.kpdnkk.gov.my/portal/index.php/en/tppm/objective>, accessed on October 2017.

consumer policy objective. The particular features of consumer disputes require tailored mechanisms that can provide consumers with access to remedies that do not impose a cost, delay and burden disproportionate to the economic value at stake.¹⁶

Whereas outside the court method is not successful, or in cases that are not conducive to informal resolution (*e.g.* cases involving fraudulent or illegitimate businesses), small claims court procedures can offer consumers access to the court system at a cost and burden not disproportionate to the amount of their claim. Other mechanism to settle consumer dispute is small claim procedure.¹⁷ Specific institution providing consumer dispute settlement is need. The institution should be only focusing the role on consumer dispute settlement. So, it must be stated that the subject are consumer and businessman while the object is dispute between them concerning consumer transaction. Hearing process will be held by the authorities whom expertise in consumer protection.

According to Thomas, consumer claims are mostly (but not all) small claims. Normally, injuries, damages or losses suffered by consumers are relatively small. He assumed that the conventional dispute resolution is not appropriate. Economically, small claim require redress mechanism that does not involve legal procedure. A reliable redress is important to ensure consumer protection.¹⁸ If the class of persons which would use the facilities of a SCC is so circumscribed as to be negligible, or if the existing court structure is adequate for all reasonable demands made upon it, the proposal to create a new tribunal may be opposed on the grounds of overlapping, expense, and over-organization. With respect to the question whether the regular court system is an adequate device, it may be urged that the inevitable expense, delay, and complexity tend to discourage the man who has a small claim.

The system of court cost and other fees is not compatible with the litigant with a small claim. Records indicate that many trial-court calendars are months or even years behind, and that small cases help to clog the wheels. The complexity of the system makes necessary an additional expense, as litigants must be represented by counsel. Since many routine small claims do not involve profound questions of law, it seems wasteful of time and money to require that they be put through an elaborate litigation process.

There are at least two alternatives, which are to provide a lawyer for the litigant without cost to himself, as in the case of legal-aid societies, or to create a new kind of court. Legal-aid societies, which would naturally appear as counsel in many small claims, are on record as favoring the establishment of small-claims courts.¹⁹

¹⁶ The Organization for Economic Co-operation and Development, *Consumer Dispute Resolution and Redress in the Global Marketplace*, Paris: Head of Publications Service, 2006, p. 6.

¹⁷ *Ibid.*

¹⁸ Thomas R, "Alternative Dispute Resolution- Consumer Dispute", *Civil Justice Quarterly*, Vol. 7, Issue 2, 1988, p. 206.

¹⁹ John S. Bradway, "Benefits, Functions, and Procedures of Small-Claims Courts", *Monthly Labor Review*, Vol. 50, No. 1, January 1940, p. 19.

However, the procedure carried out in a simple, cheap and fast way will result in an unfair judgment to the plaintiff and defendant.²⁰

C. Comparison of Consumer Dispute Settlement Institution in Indonesia and Malaysia

Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen*) is one of the consumer justice institutions located in every regency and municipalities throughout Indonesia as stipulated under Indonesia Consumer Protection Law. This institution has the primary duty to resolve consumer disputes outside the public court. The body consists of representatives of government apparatus, consumers and business actors or producers whom are appointed or dismissed by the Minister, in handling and managing consumer issues. Consumer Dispute Settlement Agency has the authority to examine the correctness of reports and statements of the parties to the dispute, to see or request a receipt, bills or receipts, lab test results or other evidence, the decision is binding and final settlement for the parties. Position of the parties on the adjudication procedure is different from the court or even small claim court. The consumer is always being the claimant while the business is the defendant.

In the early establishment of Consumer Dispute Settlement Agency, the authority to protect consumer lied on local government in Regency or Municipalities. The consequence was the budget must be allocated from Regional Government Budget. After Judicial Review Decision of Constitutional Court, the authority of Consumer Dispute Settlement Agency and its budget was transferred to Provincial Government. It is stated in Law Number 23 of 2014 on the Regional Government that regulates implementation of authority of consumer protection. This regulation does not mean to annul the authorities of Consumer Dispute Settlement Agency in Regency or Municipalities, but it is only the budget that is allocated from the province.

Resolution Adopted by The General Assembly (on the report of the Second Committee A/39/789/Add.2) 39/248 on Consumer Protection of April 16, 1985, well known as UN Guidelines on Consumer Protection, is the inspiration of establishment and development of Consumer Dispute Settlement Agency.²¹ The guidelines are as follow:

1. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population.
2. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organization to obtain redress

²⁰ John Baldwin, *Small Claim in the Country Courts in England and Wales*, Oxford: Oxford University Press, 2003, p. 48.

²¹ Yusuf Shofie, "Optimalisasi Peran Badan Penyelesaian Sengketa Konsumen (BPSK) dalam Penyelesaian Sengketa Pembiayaan Konsumen Di Tengah Terjadinya Disharmonisasi Pengaturan", this paper is presented for National Conference on the Discussion of Consumer Dispute Settlement Agency, 11-14 June 2013, Jakarta, Indonesia, p. 3.

through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.

3. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.
4. Governments should encourage consumer organizations and other interested groups, including media, to undertake education and information programs, particularly for the benefit of low-income consumer groups in rural and urban areas.

Consumer Dispute Settlement Agency is designed not as a court; there is no judge, nor conducting authority to execute the verdict. Consumer Dispute Settlement Agency is similar with Small Claims Court, but it is not Small Claims Court. It is more likely *quasi-rechtspraak* as inspired from its predecessor, Industrial Relations Court.²² This agency is designed as an alternative to consumer dispute resolution outside the court, and the main task of the organization is settling the disputes by conciliation, mediation and arbitration decision. Unfortunately, the Consumer Dispute Settlement Agency arbitration verdict may still be filed to the District Court in the legal ward of where the consumer domiciled.

Consumer Dispute Settlement Agency seems to be designed by combining Small Claim Court and Alternative Dispute Resolution. Small Claim Tribunal model is adapted to the court model and the typical ADR (Alternative Dispute Resolution) model of Indonesia. This is implied from the concept of Consumer Dispute Settlement Agency based on Indonesia Consumer Protection Law as one of the alternative dispute settlement institution outside the court, but the adjudication process is ruled by procedural law in District Court.²³ The duties and authorities of the Consumer Dispute Settlement Agency) is regulated in Article 3 of the Ministerial Decree of Industry and Trade Number 350/2001 on the Implementation of Duties and Authorities of Consumer Dispute Settlement Bodies (Ministerial Decree of Industry and Trade Number 350/ 2001), namely:

1. Carrying out consumer handling and dispute resolution with conciliation, mediation, and arbitration;
2. Providing consumer protection consultations;
3. Monitoring the inclusion of the standard clause;
4. Reporting to the public prosecutor in case of violation of the Consumer Protection Act;

²² *Ibid.*, p. 4.

²³ Al. Wisnubroto, "Alternatif Penyelesaian Sengketa Konsumen Butuh Progresivitas", <http://www.hukumonline.com/berita/baca/hol20267/alternatif-penyelesaian-sengketa-konsumen-butuh-progresivitas>, accessed on October 2017.

5. Receiving a written or unwritten complaint from the consumer about violation of consumer protection;
6. Conducting research and inspection of consumer protection disputes;
7. Calling a suspected business offender to consumer protection;
8. Calling and present witnesses, expert witnesses and/or any person who is allegedly knowing the violation of the Indonesia Consumer Protection Law;
9. Requesting assistance to the investigator to present witnesses, expert witnesses, or any person on item g and item h which is not willing to fulfill call the Consumer Dispute Settlement Agency ;
10. Obtaining, examine and/or assess letters, documents, or other evidence for investigation and/or examination;
11. Deciding and determine whether or not there is a loss on the part of the consumer;
12. Informing the verdict to the undertaking violation of consumer protection;
13. Imposing administrative sanctions on the offending business actor provisions of the Indonesia Consumer Protection Law.

Based on duty and authority, there are 2 (two) strategic functions of this institution:²⁴

1. Serving as an instrument law of dispute resolution outside court (alternative dispute resolution) through conciliation, mediation and arbitration.
2. Monitoring inclusion of a standard clause (one sided standard form contract) by the perpetrator business (Article 52(c) Indonesia Consumer Protection Law). Included here is the standard clause:

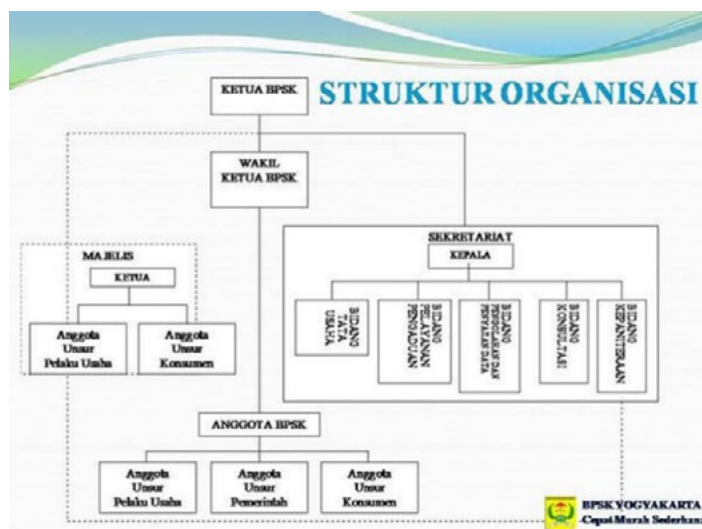


Figure 1. Organizational Structure of Consumer Dispute Settlement Agency in Indonesia

²⁴ Susanti Adi Nugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara serta Kendala Implementasinya*, Jakarta: Kencana, 2008, pp. 83-84.

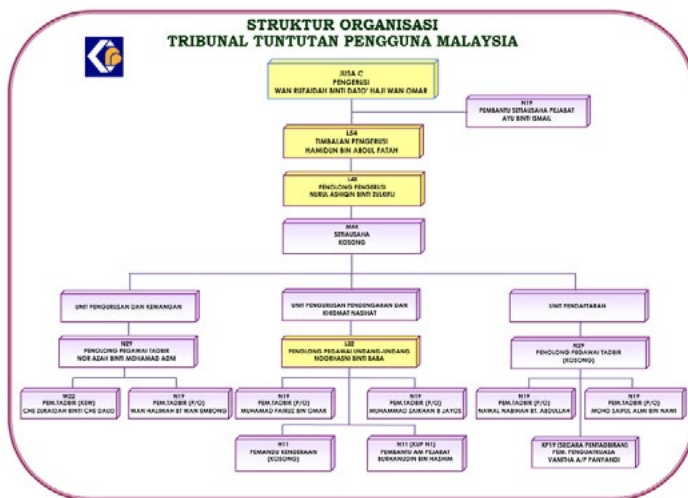


Table 1.**Comparison of Consumer Dispute Settlement Agencies in Indonesia with Malaysia**

NO		Indonesia	Malaysia
	Similarities		
1.	Outside court dispute settlement		
2.	Specific to consumer dispute		
3.	No need to representation		
4.	Final and binding decision		
	Differences		
1.	Legal basis	Article 23 of Indonesia Consumer Protection Law on Consumer Protection Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001	Section 85, Chapter XII, The Malaysia Consumer Protection Law
2.	Institution	Consumer Dispute Settlement Agency	The Tribunal For Consumer Claims
3.	Cover area	Province	National
4.	Objective	To protect consumers and business actors by creating a consumer protection system that contains elements of legal certainty and information disclosure. The existence of BPSK is expected to be part of equity distribution, since disputes among consumers and business actors are usually nominal so that consumers are reluctant to file their dispute in the Court ¹	To provide an alternative channel apart from the civil courts for consumers to claim losses in respect of goods purchased or services acquired from traders or service providers in a SIMPLE, CHEAP and FAST manner.
5.	Jurisdiction	All consumer dispute	The Tribunal has the jurisdiction to hear: <ol style="list-style-type: none"> 1. Any claim in respect of any matter within its jurisdiction to hear as provided for under the Act; 2. Where the total amount claimed does not exceed RM25,000.00; 3. Any claim in respect of any goods or services for which no redress mechanism is provided for under any other written law; and 4. A claim based on a cause of action which accrues within three years of the claim.

6.	Limitation of the jurisdiction	Non-consumer dispute	<p>The Tribunal has NO jurisdiction to hear any claim:</p> <ol style="list-style-type: none"> arising from personal injury or death; for the recovery of land or any estate or interest in land; dispute in respect of title of any land or estate or interest in land; dispute concerning the entitlement of any person under a will or on any intestacy; dispute on matter in respect of: <ul style="list-style-type: none"> Franchise; Good will; Trade secrets or other intellectual property ; any chose in action; Where any other tribunal had been established under any other written law to hear and determine claims on matters which is the subject matter of such claim.
7.	Membership of The Tribunal	The members can be from either the government, consumers and entrepreneurs.	The officers from the Judicial and Legal Service and not less than five other members of the Tribunal appointed by the Minister.
8.	Expired of filling case	No limitation.	3 years (Section 99(2) Malaysia Consumer Protection Law).
9.	Limit value of lawsuit	No limitation.	No more than 25.000 RM (Section 98 Malaysia Consumer Protection Law).
10.	H e a r i n g process	Private.	Open to the public
11.	Length of procedure	<p>Article 55</p> <p>The consumer dispute settlement agency is obligated to render a decision at the latest within 21 (twenty-one) days after the charge is received.</p>	

		<p>the consumer dispute settlement agency as intended by Article 55 above, the entrepreneurs are obligated to implement the said decision.</p> <p>(2) The parties may submit an appeal to the District Court at the latest within 14 working days after receiving the notification of the said decision.</p>	<p>The Tribunal shall make it award without delay within 60 days from 1st day the hearing before the tribunal commences</p> <p>The Tribunal Office will fix a date for the hearing. Before the hearing, the Tribunal will help the parties to come to a negotiated settlement. If this fails, the hearing will be held. The Tribunal President will make his decision based on the evidence presented and the facts of the case. The Tribunal Award must be complied within 14 days. There is no appeal allowed against the decision of the Tribunal.</p>
13.	Compliance with the decision	At the latest within 7 days upon receiving the decision by the consumer dispute settlement agency, the entrepreneurs are obligated to implement the said decision.	If one of the parties fail to comply with the award after 14 days from the date award, the party is considered as committing an offence and liable on conviction ²
14	Advantages	<ol style="list-style-type: none"> 1. Helping the consumer, especially in the case of easy, fast, no-cost lawyer procedures. All costs incurred are already charged to the APBD of each Province in accordance with the mandate of Law Number 8 Year 1999 on Consumer Protection. 2. Simple procedure because the solution must use rigid legal arguments. Consumers/ complainants may file a written or unwritten lawsuit regarding a violation of consumer protection. Thus, consumer dispute resolution through BPSK does not require both parties to choose BPSK as a dispute resolution forum. 3. The parties may choose a dispute resolution model, namely by conciliation, 	<ol style="list-style-type: none"> 1. Composition of Tribunal is weighted towards person with the legal background. 2. Does not provide for representation by consumer association. 3. Does not allow class action. 4. Allows counter claim by traders. 5. The hearing during weekdays and office hours. 6. No appeal allowed the decision of the Tribunal 7. Limited jurisdiction of the Tribunal.³

		<ol style="list-style-type: none"> 4. mediation or arbitration. 5. Final and binding decision. There is no need to be brought to court. 6. The tribunal has a complete member where it comes from consumer, business and government. These members are elected persons who have knowledge in consumer protection law. 	
15.	Disadvantages	<ol style="list-style-type: none"> 1. BPSK does not yet have specific rules governing and only to the Act. 2. The agency is not yet available in all provinces in Indonesia 3. Even the decision is final and binding, Procedures in BPSK still provide room for business actors to object to the district court. 4. Decisions made by BPSK do not have a final coercive force. So the party defeated by the consumer does not want to take a decision even take legal action in the field of public court. 5. Monitoring of BPSK members is not yet fully operational. 6. Consumer Protection Act Indonesia does not provide more detailed regulations relating to the application of execution to the decision of BPSK. 	
16.	Nature of award	The award shall be final and binding on all parties to the proceedings and shall to be an order to magistrate's court	The award shall be final and binding on all parties to the proceedings and shall to be an order to magistrate's court.
17.	E-tribunal	No e-tribunal	E-Tribunal, a web-based system developed by ministry of domestic trade, co-operatives and consumerism, to provide facilities for the consumers to enquire about file claims to tribunal for consumer claims in Malaysia

D. Small Claim Mechanism for Consumer in Indonesia: A Lesson from Malaysia

Indonesia has a small procedure regulation named The Rules of Supreme Court Number 2 of 2015 concerning Procedures of Simple Claim Settlement. The terminology is simple claim not small claim. On the author's opinion, the substance of the regulation is about small claim. A simple lawsuit is a civil suit with the value of material lawsuit at most Rp.200.000.000,00 (two hundred million rupiah) which is solved by a simple procedures and verification. Settlement with a simple lawsuit can only be used for breach of contract and/or Unlawful Acts.

However, not all cases of breach of contract and or unlawful act can be completed through completion simple lawsuit. Cases that cannot be resolved through this mechanism, among others:

1. Cases of which the settlement of the dispute conducted by a special court as set out in the legislation, such as competition, consumer dispute and industrial relations disputes.
2. Cases related to rights disputes over the ground.

Therefore the Small Claim Court has not been established for consumer dispute settlement in Indonesia.

Based on Indonesia Consumer Protection Law, consumer dispute settlement excludes from mechanism and is taken care by a special institution. Article 45(4) mentions two ways of consumer settlement:

1. Dispute resolution outside the court
 - a. The settlement of disputes peacefully, by the parties themselves, customers and business actors/producers;
 - b. Dispute resolution through the Conflict Resolution Body using alternative dispute resolution mechanisms, namely conciliation, mediation and arbitration.
2. Dispute resolution to the court.

The outside court consumer dispute settlement is held to reach agreement on the form and amount of compensation, or on specific actions to ensure that there will be no recurrence of any losses suffered by the consumer. Customer dispute settlement patterns beyond the requirements of the Act, are the right choice, since the formulated solution contains a satisfactory solution to the disrupted party.

By having no small specific small claim court for the consumer, it will strengthen the function of existing dispute settlement institution/mechanism especially Consumer Dispute Settlement Agency. Based on Presidential Decree No. 90/2001 on Establishment of Consumer Dispute Settlement Agency, in an effort to facilitate the consumers to reach the institution, there is no Jurisdictional area limitation, so that the consumer can complain to the Dispute Settlement Agency.

Malaysia has set up in January 2, 1987 to help the consumer for fast, simple and informal, Small Claim Court (SCC). In 1988, SCC has jurisdiction to hear small

claims where the claim does not exceed RM 5.000 (Order 93, rule 2 ROC). No lawyer is allowed to represent either the claimant or defendant, unless it is a registered company (Order 93, rule 7). Only the claimant and the defendant are allowed to put their cases forward before a magistrate. The magistrate's judgment is final and neither party can appeal to a higher court, unless it is on a point of law.

As a benchmarking, we should also consider the shortcoming of SCC in Malaysia. According to Zakuan, the weakness of it as follows: ²⁷

1. Privately Proceedings in Magistrate Chambers.
2. This point is contrary to the fundamental principles that judicial proceedings should be conducted openly for public interest and checks and balances system.
3. No representation.
4. SCC does not allow the party to be represented by a counsel. The absence of legal counsel causing stress among the parties involved when undergoing a kind of a complicated trial process.
5. No cost regime.
6. The losing party is not to be charged of any cost. Application of this regime prevents the consumer from using legal services.
7. Magistrate actively resolves dispute.
8. This action will only result in the failure to uphold justice. If shorter period taken to settle the claim, this will weaken the SCC system as the magistrate will make the judgment feverishly.
9. Without appeal process.
10. When the error in law occurs, it will prevent the plaintiff from gaining justice.

E. Conclusion

The urgencies of consumer dispute settlement body and small claim mechanism are to guarantee ultimate consumer interest. Comparing of consumer dispute settlement law in Indonesia and Malaysia, each institution and mechanism has its own advantages and disadvantages to consider for betterment in the future. Consumer Dispute Agency is a middle way or a combination off SCC system and specific dispute resolution body. But, Indonesia needs to reiterate the existing Consumer Protection Law regarding the duty and authority of Consumer Dispute Settlement Agency. There is authority overlap with other agencies needed to be addressed.

References

Books

Baldwin, John, *Small Claim in the Country Courts in England and Wales*, Oxford University Press, Oxford, 2003.

Black, Henry Campbell, *Black's Law Dictionary*, 4th Edition, West Publishing Co., New York, 1968.

²⁷ *Ibid.*

- Cartwright, Peter, *Consumer Protection and the Criminal Law: Law, Theory and Policy in the UK*, Cambridge University Press, Cambridge, 2001.
- Center for Domestic Trade Policy Agency for the Assessment and Development of Trade Policy, *Final Report Analysis of Optimization of Consumer Protection in Indonesia*, Ministry of Trade Republic of Indonesia, Jakarta, 2016.
- Inosentius Samsul, *Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak*, Universitas Indonesia, Jakarta, 2004.
- Romli Atmasasmita, *Perbandingan Hukum Pidana*, Mandar Maju, Bandung, 2000.
- Shidarta (ed.), *Hukum Perlindungan Konsumen Indonesia*, Grasindo, Jakarta, 2004.
- Susanti Adi Nugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara serta Kendala Implementasinya*, Kencana, Jakarta, 2008.
- The Organization for Economic Co-operation and Development, *Consumer Dispute Resolution and Redress in the Global Marketplace*, Paris: Head of Publications Service, 2006.
- Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-instrumen Hukumnya*, Citra Aditya Bakti, Bandung, 2009.
- Zweigert and H. Kötz, *An Introduction to Comparative Law*, 2nd edition, Oxford University Press, Oxford, 1998.

Other Documents

- Abdullah, Nuraisyah Chua, "Legal Civil Remedies in Malaysia: Developments and Challenges", <https://www.law.cuhk.edu.hk/en/research/crj/download/presentations/20150130-nca-presentation.pdf>, accessed on October 2017.
- Axworthy, Christopher S., "Controlling the Abuse of Small Claims Courts", *McGill Law Journal*, Vol. 2, No. 2, 1976.
- Bradway, John S., "Benefits, Functions, and Procedures of Small-Claims Courts", *Monthly Labor Review*, Vol. 50, No. 1, January 1940.
- Harris, W., "Consumer Disputes and Alternative Dispute Resolution", *Australian Dispute Resolution Journal*, Volume 4, Issue 3, 1993.
- Kurniawan, "Permasalahan dan Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK)", *Jurnal Dinamika Hukum Fakultas Hukum Universitas Mataram*, Vol. 12, No. 1, 2012.
- Ministry of Domestic Trade, Co-operatives, and Consumerism of Malaysia, "Objective", <https://tptm.kpdnkk.gov.my/portal/index.php/en/tptm/objective>, accessed on October 2017.
-
- _____, "Tribunal for Consumers Claims Malaysia", <https://tptm.kpdnkk.gov.my/portal/index.php/en/>, accessed on October 2017.
- Moulton, Beatrice, "The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California", *Stanford Law Review*, Vol. 21, No. 6, 1969.

- Nuraisyah Chua Abdullah, "Legal Civil Remedies in Malaysia: Developments And Challenges", <https://www.law.cuhk.edu.hk/en/research/crj/download/presentations/20150130-nca-presentation.pdf>, accessed on October 2017.
- O'Shea, Paul and Charles Rickett, "In Defence of Consumer Law: The Resolution of Consumer Disputes", *Sydney Law Review*, Vol. 28, No. 139, 2006.
- Pound, Roscoe, "The Administration of Justice in the Modern City", *Harvard Law Review*, Volume 26, Number 4, 1913.
- Sakina Shaik Ahmad Yusoff, "Consumer Court: Toward a Better Consumer Protection in Malaysia", *International Business Management*, Vol. 9, No. 6, 2015, pp. 1495-1499.
- Thomas R, "Alternative Dispute Resolution- Consumer Dispute", *Civil Justice Quarterly*, Volume 7, Issue 2, 1988.
- United Nations Department of Economic and Social Affairs, "United Nations Guidelines for Consumer Protection (as expanded in 1999)", www.un.org/esa/sustdev/publications/consumption_en.pdf, accessed on October 2017.
- Wisnubroto, "Alternatif Penyelesaian Sengketa Konsumen Butuh Progresivitas", <http://www.hukumonline.com/berita/baca/hol20267/alternatif-penyelesaian-sengketa-konsumen-butuh-progresivitas>, accessed on October 2017.
- Yusoff, Sakina Shaik Ahmad, "Consumer Court: Toward a Better Consumer Protection in Malaysia", *International Business Management*, Vol. 9, No. 6, 2015.
- Yusuf Shofie, "Optimalisasi Peran Badan Penyelesaian Sengketa Konsumen (BPSK) dalam Penyelesaian Sengketa Pembiayaan Konsumen di Tengah Terjadinya Disharmonisasi Pengaturan", this paper is presented for National Conference on the Discussion of Consumer Dispute Settlement Agency, 11-14 June 2013, Jakarta-Indonesia.

Legal Documents

- Law of the Republic of Indonesia Number 8 of 1999 on the Consumer Protection.
- Laws of Malaysia Act 599 Consumer Protection Act 1999.
- Ministerial Decree of Industry and Trade Number 350/MPP/Kep/12/2001 on the Implementation of Duties and Authorities of Consumer Dispute Settlement Bodies.
- Resolution Adopted by The General Assembly (on the report of the Second Committee A/39/789/Add.2) 39/248 on Consumer Protection 1985.